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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 443

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.,
Petitioners,

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.,
Respondents.

ANSWER AND BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Attorneys for Respondents

September, 1957

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COME Respondents and with respect files their brief in opposition to the petition for writ of certiorari.

STATEMENT OF THE CASE

This case is a declaratory judgment suit, brought originally by Petitioners in the District Court of Travis County, Texas, 98th Judicial District, to

determine the validity of the Naturopathic Act of Texas. (Article 4590d, Vernon's Texas Civil Statutes).

The facts of this case are stated in the pleadings and are agreed to be correct. These facts as pleaded by all parties reveal that the alleged State Board of Naturopathic Examiners tendered certain fees collected by it to the State Treasury and the State Comptroller refused to accept the fees on the ground that the Naturopathic Act was invalid for vagueness and in violation of the preference provision of Section 31 of Article XVI of the Constitution of Texas.

OPINIONS BELOW

The 98th District Court of Texas entered a judgment on May 24, 1956, declaring the Naturopathic Act valid. The Court of Civil Appeals for the Third Supreme Judicial District of Texas, on January 30, 1957, reversed and rendered the judgment of the trial court and declared the Naturopathic Act of Texas invalid for vagueness, in that it affirmatively authorized and affirmatively denied to those complying with its terms the privilege of practicing medicine as that term is defined by the statutes of this State. The judgment of the Court of Civil Appeals also declared the Naturopathic Act void because violative of the preference provision of Section 31 of Article XVI of the Constitution of Texas. The Supreme Court of Texas on May 1, 1957, refused Petitioners' Application for Writ of Error, having determined that the application presented no error which required a reversal of the judgment of the

Court of Civil Appeals. On June 12, 1957, the Supreme Court of Texas overruled Petitioners' Motion for Rehearing of Application for Writ of Error.

JURISDICTION

This is a declaratory judgment suit and Petitioners have exhausted all their remedies in the state courts of Texas.

It is questioned by Respondents that any substantial federal question is presented for adjudication by the Supreme Court of the United States. There is but one question; and that is, whether this Court will exercise its jurisdiction to decide whether the state court of last resort has correctly interpreted state laws.

QUESTION PRESENTED

Will the Supreme Court of the United States grant certiorari for the reason that Petitioners have asserted in their petition that the Supreme Court of Texas has erroneously interpreted State laws, and that such interpretation deprives Petitioners of their property without due process of law in violation of the 14th Amendment of the United States Constitution?

ARGUMENT

This case was instituted by Petitioners pursuant to the provisions of the Declaratory Judgments Act of Texas to determine whether the Naturopathic Act of Texas is in violation of certain provisions of the Constitution of Texas. The judgment of the state court rests solely on an interpretation of the Naturopathic Act of Texas, the Medical Practice

Act of Texas, Section 10 of Article I of the Constitution of Texas, and Section 31 of Article XVI of the Constitution of Texas.

The Supreme Court of the United States will not review judgments of state courts that rest on adequate and independent state grounds. *Black v. Cutter Laboratories*, 351 U.S. 292, 298; *Herb v. Pitcairn*, 324 U.S. 117, 125; *Klinger v. State of Missouri*, 13 Wall. (U.S.) 257, 263; *Murdock v. Memphis*, 20 Wall. (U.S.) 590, 636; *Berea College v. Kentucky*, 211 U.S. 45, 53; *Enterprise Irrig. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164; *Fox Film Corp. v. Muller*, 296 U.S. 207, 210.

All questions arising under the Constitution of the state alone are finally settled by the judgment of the state court. *Walker v. Sauvinet*, 92 U.S. 90, 92. The proper construction, interpretation and effect of a state statute or constitutional provision being a question of local law and not Federal law, the judgment of a state court thereon is not subject to review by this Court. *Knights of Pythias v. Meyer*, 265 U.S. 30, 32; *Hotel & R. Employee's International Alliance v. Wisconsin Employment Relations Bd.*, 315 U.S. 437, 438; *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 680; *Morehead v. New York*, 298 U.S. 587, 609; *Senn v. Tile Layers' Protective Union*, 301 U.S. 468, 477; *Moore v. Illinois Central R. Co.* 312 U.S. 630, 633.

Applying these principles to the instant case, the judgment of the state court rests on adequate and independent state grounds. First, the state court has entered judgment declaring that the Act in question is invalid since it affirmatively authorizes a limited

practice of medicine and also affirmatively denies that the statute shall have such effect thereby attempting to both grant and deny to those coming within its terms the privilege of practicing medicine as defined by the statutes of this State. Second, the state court has entered judgment declaring the Act in question to be in violation of the preference clause of Section 31, Article XVI of the Constitution of Texas. We respectfully submit, therefore, the judgment of the state court rests on adequate and independent state grounds, and that the United States Supreme Court should not grant certiorari in this matter.

CONCLUSION

WHEREFORE, it is respectfully submitted that the Petition for Writ of Certiorari to review the judgment of the Supreme Court of Texas should be denied.

Respectfully submitted,

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September, 1957

SERVICE

I, C. K. RICHARDS, Assistant Attorney General of Texas, am a member of the Bar of the Supreme Court of the United States, and I do hereby certify that a copy of the foregoing brief has been forwarded by United States Air-mail, postage prepaid, to Petitioners' Attorneys, Mr. Benedict F. FitzGerald, Jr. and Mr. John B. Olverson, National Press Building, Washington 4, D. C.

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